

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

June 30, 2003

ORDER ON WAIVER REQUEST  
(AT&T COMMUNICATIONS OF  
NEW ENGLAND, INC.)

PUBLIC UTILITIES COMMISSION  
Utility Service Area and Infrastructure  
Maps (Chapter 140)

Docket No. 2001-284

PUBLIC UTILITIES COMMISSION  
Investigation of AT&T of New England, Inc.  
for Failure to Comply with Requirements of  
Chapter 140 (Utility Service Area and  
Infrastructure Maps)

Docket No. 2003-129

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY OF DECISIONS**

In this Order, we grant a request for a limited extension of time for AT&T of New England, Inc. (AT&T) to comply with currently applicable provisions of Chapter 140 of the Commission's Rules. We will not grant a substantive waiver from the Rule that is implicitly requested in AT&T's most recent submission on this matter.

**II. BACKGROUND**

A. The Rule and Its Requirements

On October 19, 2001, the Commission adopted Chapter 140 of its Rules to require certain public utilities to develop, maintain, and file with the Commission maps of their service area and key infrastructure. *Public Utilities Commission, Utility Service Area and Infrastructure Maps (Chapter 140)*, Docket No. 2001-284, Order Adopting Rule and Statement of Factual and Policy Basis (Oct. 19, 2001) (Chapter 140 Order). That Rule, which became effective on October 29, 2001, requires interexchange carriers (IXCs) to develop and file current maps of their key infrastructure in both paper and electronic (GIS) form, and to file such maps by July 1, 2002. MPUC Rules, ch. 140, § 3(A). The Rule allows a waiver "where good cause exists" and "the granting of the waiver would not be inconsistent with the purposes of [Chapter 140] or Title 35-A." MPUC Rules, ch. 140 § 4.

B. Previous History

1. Failure To Comply With Rule

AT&T Communications of New England, Inc. (AT&T) did not file any of the information required by Chapter 140 by the deadlines in the Rule. It also did not file or a request for waiver of the applicable filing requirements or of the deadlines. On March 4, 2003, we found that AT&T was in violation of Chapter 140, and opened initiated an investigation into AT&T's noncompliance, as well as contempt proceedings for failure to comply. *Public Utilities Commission, Investigation of AT&T of New England, Inc. for Failure to Comply with Requirements of Chapter 140 (Utility Service Area and Infrastructure Maps)*, Docket No. 2003-129, Notice of Investigation and Contempt Proceeding; Show Cause Order (Mar. 4, 2003)

2. Security Waiver

On March 25, 2003, AT&T of New England, Inc. (AT&T) provided limited information about its facilities in Maine and requested a waiver of the requirements of Chapter 140 for claimed security reasons. On May 7, 2003, the Acting Director of the Commission's Technical Analysis Division determined that AT&T had not shown good cause for the waiver, and accordingly did not grant the requested waiver. *Public Utilities Commission, Utility Service Area and Infrastructure Maps (Chapter 140)*, Docket No. 2001-284, Order on Waiver (May 7, 2003).

C. Present Filing

1. Substance of Request

In the letter filed on June 11, 2003, AT&T requested a waiver from the Rule "to extend the time until September 8<sup>th</sup> for filing georeferenced maps of the transmission facilities in Maine." The letter also stated that AT&T plans to show "the locations of the stations" in its September filing, but states that "the stations will be connected by lines that show the connections between the stations, but the actual route of the lines will not be accurately depicted on the map." We interpret this statement as one that AT&T does not intend to comply with the Rule's requirements, and we address this statement under the waiver provision of the Rule.

2. Assertion of Confidentiality of Request

AT&T marked the June 11, 2003 request itself (a two-page letter) as:

CONFIDENTIAL MATERIAL PURSUANT TO CHAPTER 140 – This information is provided to the Maine Public Utilities Commission in expectation of protection from disclosure as provided by the Critical Infrastructure Information Act of 2002.

AT&T's reference is to a federal Act that applies to critical infrastructure information voluntarily submitted to a covered Federal agency under certain conditions. AT&T made the same claim about materials contained in its March 25, 2003 filing, and the Acting Director of Technical Analysis ruled that the claim was not valid. See *Public Utilities Commission, Utility Service Area and Infrastructure Maps (Chapter 140)*, Docket No. 2001-284, Order on Waiver (May 7, 2003) at 2. The information in AT&T's June 11, 2003 letter is not itself infrastructure information and is not being voluntarily submitted to a federal agency. The Critical Infrastructure Information Act of 2002 is simply inapplicable. AT&T's letter also contains no infrastructure maps and data which are subject to protection under Chapter 140. In addition, the federal Act explicitly does not limit or otherwise affect the ability of a State agency to obtain critical infrastructure information directly. AT&T's June 11, 2003 letter is not confidential as marked.

### III. CONSIDERATION OF WAIVERS

#### A. Request For Extension

In its June 11, 2003 waiver request, AT&T stated that it "does not have the required information in a GIS format" and that it "must either acquire the software . . . or hire a contractor" to prepare that filing. AT&T requested an extension of the deadline for that filing until September 8, 2003. Although the Commission adopted Chapter 140 on October 19, 2001, with a filing deadline of July 1, 2002 for initial filings by AT&T, AT&T did not make any filings responsive to the requirements of that Rule until after the Commission opened a formal Investigation of AT&T in March 2003 for its failure to comply with the Rule. AT&T continues to be in noncompliance with Chapter 140.

AT&T has had more than enough time to arrange to provide the information required by Chapter 140. The history of AT&T's actions and inactions since the adoption of this Rule are set forth in detail in the Notice of Investigation and Contempt Proceeding in Docket No. 2003-129 and in the May 7, 2003 Order on Waiver issued by the Acting Director of Technical Analysis. Utilities with far fewer resources than AT&T have managed to comply with the Rule. The Rule has been in effect for one year and eight months, and AT&T has missed the deadline for compliance by 12 months. However, at this point we will grant the waiver requested by AT&T solely because it is unlikely that it can immediately acquire and implement use of the software it has stated it needs. AT&T will have a heavy burden to justify any further time extension waiver for reasons related to the reasons for the extension we grant in this Order. We also believe that AT&T cannot legitimately rely on any assertion that compliance would compromise security. Those concerns were addressed in the rulemaking itself and are adequately addressed in the Rule. We require AT&T to comply fully with the provisions of Chapter 140 that apply to AT&T by the date requested by AT&T, September 8, 2003. Failure to comply will result in consideration of a specific penalty in the Investigation-Contempt proceeding, Docket No. 2003-129.

B. Depiction of Location of Facilities

AT&T's June 11, 2003 request states that AT&T plans to show "the locations of the stations" in its September filing, but that "the stations will be connected by lines that show the connections between the stations, but the actual route of the lines will not be accurately depicted on the map." We interpret the Rule to require that maps show an accurate depiction of all facilities. Section 3(A) states:

Requirement to File Infrastructure Maps. All utilities subject to the requirements of this Chapter (except T&D utilities that provide service only on offshore islands) with facilities in Maine must develop and maintain current maps showing the key infrastructure used or available for use by the utility for the production, transport, transmission, and distribution of services in Maine. Infrastructure maps must incorporate key infrastructure attributes defined in this Chapter. Utilities must prepare as many infrastructure maps as needed to include their entire service area in Maine. Maps must be filed in both paper and electronic (GIS) form as provided in § 3(C) below.

Section 1(C) of the Rule states:

C. Paper Copy Maps. Paper copy maps required by this Chapter must be prepared using base data with locational accuracy of at least 1:24,000 that shows features within  $\pm 40'$  ( $\pm 12.2\text{m}$ ) of their actual location on the ground.

Section 1(D) states:

D. Electronic Copy Maps. Electronic copy maps required by this Chapter must be prepared using base data with locational accuracy of at least 1:24,000 that shows features within  $\pm 40'$  ( $\pm 12.2\text{m}$ ) of their actual location on the ground.

The statement by AT&T in its letter appears to be an assertion that AT&T will not comply with the locational depiction requirements of the Rule; AT&T did not, however, specifically request a waiver of those requirements.

Section 3(B) of the Rule does state:

B. Single-Line Diagrams. If a utility does not have geographically-located data for certain infrastructure lines, it may file a map that shows the lines between its geographically-located midpoints and endpoints as representational point-to-point lines, in lieu of geographically-located lines.

The paper maps filed by AT&T in March, however, did contain geographically-located facilities data, at least for facilities owned by AT&T.<sup>1</sup> AT&T has made no claim that the data is not available.

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<sup>1</sup> Those maps also showed leased facilities as straight lines, but AT&T made no specific claim that the actual locations were not available to it. AT&T also failed to

To prevent further delays and additional paperwork in this proceeding, we will consider AT&T's statement as an additional waiver request and consider it pursuant to the Rule's waiver provision in Section 4. AT&T did not explain why it could not provide the data in question in geographically-located form. Indeed, in its June 11, 2003 letter, AT&T stated that it "must either acquire the software . . . or hire a contractor" to prepare its filing. Thus, even if it does not presently have the required data in the form required by Chapter 140, AT&T has indicated that it intends to prepare a georeferenced filing. AT&T has had ample opportunity to prepare that data in the form required by the Rule. We have granted it a waiver that will allow it to file the required maps more than 14 months after the deadline set in the Commission Rule. AT&T has failed to provide any support or otherwise show good cause for a waiver related to geographically-located data. We therefore will not grant a waiver for AT&T to provide single-line diagrams in lieu of geographically-located data.

We note that the March filing failed to comply with the requirements of the Rule in a number of respects. As discussed above, it provided none of the information in a standard electronic georeferenced exchange format required by the Rule (e.g., GIS). As noted above (see footnote 1), its maps showed only straight lines for leased facilities, but AT&T made no claim that it did not have the actual geographic locations available. An e-mail from the Commission staff to AT&T's attorney, sent on April 1, 2003, described the omissions and deficiencies in AT&T's filing.<sup>2</sup> We expect AT&T to

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identify the carrier from which it leases the facilities, as required by Chapter 140, § 1(B)(3)(d). The March filing contained a number of other deficiencies, as discussed below.

<sup>2</sup> In addition to those described in the text, the e-mail listed the following deficiencies:

1. The paper copy maps failed to include names, descriptions, date, scale, and filename references (Ch. 140 § 1(C)).
2. The paper copy maps were not within the allowable size range (Ch. 140 § 1(C)).
3. A street address was missing for one of the locations provided (the mid-coast site) (Ch. 140 § 1(B)(3)(d)).
4. Geocodes were not provided (Ch. 140 § 1(B)(3)(a)).
5. Leasing (including ownership), CLLI code, V&H coordinate, and backup power information were not provided (Ch. 140 § 1(B)(3)(d)).
7. SONET, TSP/TESP, and SS7 information was not provided (Ch. 140 § 1(B)(2)(c)).
8. Metadata was not included (Ch. 140 § 1(D)).

comply fully with all requirements of the Rule, for both paper and electronic formats, in its filing that is now due on September 8, 2003.

#### **IV. CONCLUSION**

For the reasons set forth herein, we grant a waiver of the applicable Chapter 140 filing deadline and require AT&T Communications of New England, Inc. to file infrastructure transmission maps meeting all applicable requirements of Chapter 140 on or before September 8, 2003. AT&T must file georeferenced data for all applicable facilities and equipment listed in Chapter 140, § 1(B)(2)(c), that comply with the specifications contained in Sections 1(C) and (D), on or before that date, and by April 1 of each year thereafter. Beginning on April 1, 2004, AT&T shall include all applicable key infrastructure attributes in its filings pursuant to Section 1(B)(3)(d) of Chapter 140.

Dated at Augusta, Maine, this 30<sup>th</sup> day of June, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond

COMMISSIONER ABSENT:              Nugent

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.